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PATENT APPLICATION

ATTORNEY DOCKET NO. 200316365-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Chuck A. Black

Confirmation No.: 1425

Application No.: 10/761,088

Examiner: GILLIS, Brian J.

Filing Date: January 20, 2004

Group Art Unit: 2441

Title: Network and Network Device Health Monitoring

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on November 26, 2008.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

No fee is required for filing of this Reply Brief.

If any fees are required please charge Deposit Account 08-2025.

Respectfully submitted,

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REPLY BRIEF

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Sir:

This is a Reply Brief under Rule 41.41 (37 C.F.R) in response to the Examiner's Answer of November 26, 2008 (the "Examiner's Answer" or the "Answer"). In Section 10, the Answer contains a response to some of the arguments made in Appellant's brief. Appellant now responds to the Examiner's Answer as follows.

Status of Claims

No claims have been cancelled or withdrawn. Claims 1-39 are currently pending in the application and stand finally rejected. Accordingly, Appellant appeals from the final rejection of claims 1-39, which claims are presented in the Appendix of the previously filed Appeal Brief.

Grounds of Rejection to be Reviewed on Appeal

The final Office Action raised the following grounds of rejection.

(1) Claims 1-6, 8-16, 18-19, and 21-37 were rejected under 35 U.S.C. § 103(a) as being obvious in light of the combined teachings of U.S. Patent No. 5,819,028 to Manghirmalani et al. (“Manghirmalani”), U.S. Patent Application Publication No. 2004/0078683 to Buia et al. (“Buia”), and U.S. Patent No. 7,080,141 to Baekelmans et al. (“Baekelmans”).

(2) Claims 7, 17, and 38-39 were rejected under 35 U.S.C. § 103(a) as being obvious in light of the combined teachings of Manghirmalani, Buia, Baekelmans, and U.S. Patent Application Publication No. 2005/0086502 to Rayes et al. (“Rayes”).

(3) Claim 20 was rejected under 35 U.S.C. § 103(a) as being obvious in light of the combined teachings of Manghirmalani, Buia, Baekelmans, and U.S. Patent Application Publication No. 2004/0122645 to Shevnell et al. (“Shevnell”).

According, Appellant hereby requests review of each of these grounds of rejection in the present appeal.

VII. Argument

(A) Claims 1-6, 8-16, 18-19, and 21-37 are patentable over Manghirmalani, Buia, and Baekelmans:

In the present application, independent claim 1 recites:

A network management station, comprising:
a processor;
a memory coupled to the processor; and
program instructions provided to the memory and executable by the processor to:
transmit a network management message to a device connected to the network management station over a network;
collect response information from the device based on the network management message;
receive unsolicited information from the device; and
analyze the response information and the unsolicited information, which include information regarding device memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC), according to a set of heuristics to provide a health measurement of the device.

(Emphasis added).

Independent claim 12 recites:

A network management station, comprising:
a processor;
a memory coupled to the processor; and
program instructions provided to the memory and executable by the processor to:
poll a device, connected to the network management station over a network, with network management messages;
receive memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC) information in response to the polling and as unsolicited information initiated by and transmitted from the device; and
apply heuristics to the received memory utilization, buffer utilization, LAN utilization, and CRC information from the polling and unsolicited transmissions collectively to determine a health of the device.

(Emphasis added).

Independent claim 18 recites:

A method for network and network device monitoring, comprising:
transmitting a network management message to a device;
collecting response information from the device based on the network
management message;
receiving unsolicited information from the device; and
*analyzing the response information and the unsolicited information, which
include information regarding device memory utilization, buffer utilization, local area
network (LAN) utilization, and cyclical redundancy checking (CRC), according to a
set of heuristics to provide a health measurement of the device.*

(Emphasis added).

Independent claim 30 recites:

A method for network and network device monitoring, comprising:
polling a device with network management messages;
receiving memory utilization, buffer utilization, local area network (LAN) utilization,
and cyclical redundancy checking (CRC) information in response to the polling and as
unsolicited information initiated by and transmitted from the device; and
*applying heuristics to the received memory utilization, buffer utilization, LAN
utilization, and CRC information from the polling and unsolicited transmissions
collectively to determine a health of the device and the network.*

(Emphasis added).

Independent claim 33 recites:

A computer readable medium having instructions for causing a device to
perform a method, comprising:
transmitting a network management message to a device;
collecting response information from the device based on the network
management message;
receiving unsolicited information from the device; and
*analyzing the response information and the unsolicited information, which
include information regarding device memory utilization, buffer utilization, local area
network (LAN) utilization, and cyclical redundancy checking (CRC), according to a
set of heuristics to provide a health measurement of the device.*

(Emphasis added).

Independent claim 34 recites:

A network management station, comprising:
a processor;
a memory coupled to the processor;
means for receiving solicited and unsolicited information from a network device, the unsolicited information initiated by and transmitted from the network device, the solicited and unsolicited information including memory utilization, buffer utilization, local area network (LAN) utilization, and cyclical redundancy checking (CRC); and
means for analyzing the received solicited and unsolicited information collectively to provide a health measurement of the network device.
(Emphasis added).

At issue here is whether the prior art renders obvious the claimed network management station or other device that analyzes the solicited response information and unsolicited information to provide a health measurement of a device, as recited, in some form, in each of independent claims 1, 12, 18, 30, 33, and 34.

As noted previously, the Examiner has conceded in the Final Office Action dated August 22, 2008 that Manghirmalani fails to teach “receiving unsolicited information from the device.” Accordingly, Manghirmalani *cannot* teach or suggest “analyz[ing] the response information *and the unsolicited information*,” as recited in claims 1, 18, 30, and 34, or “applying heuristics to...information received from the polling and unsolicited transmissions,” as recited in claims 12 and 33, to measure the health of a device. Appellant has also noted in the previous Appeal Brief that none of the Manghirmalani, Buiia, and Baekelmans references, alone or in combination, teaches, suggests, or renders obvious this subject matter.

Consequently, Appellant submits that the Final Office Action and Examiner’s Answer fail to establish a *prima facie* case of obviousness with regard to independent claims 1, 12, 18, 30, 33, and 34 and their corresponding dependent claims.

The Answer makes no rebuttal to Appellant's statement that none of the cited references teaches or suggests analyzing or applying heuristics to both received and unsolicited information to measure the health of a device. Specifically, the Examiner has never cited to any portion of Manghirmalani, Buia, or Baekelmans that teaches "analyz[ing] the response information *and the unsolicited information*," as recited in claims 1, 18, 30, and 34, or "applying heuristics to...information received from the polling and unsolicited transmissions," as recited in claims 12 and 33, to measure the health of a device.

According to the Supreme Court, the Examiner is required to provide an explicit analysis as to how the cited prior art teaches or suggests all the features of a claim. "To facilitate review, this [the Examiner's] analysis should be made explicit." (*KSR International Co. v. Teleflex, Inc.*, 550 U.S. ____ (2007)). The Examiner has made no such analysis, and is unfairly attempting to read teachings into the cited prior art that simply are not there. Therefore, under the standard of *KSR*, no *prima facie* case of obviousness has been made as to claims 1, 12, 18, 30, 33, and 34. For at least this reason, the rejection of claims 1, 12, 18, 30, 33, 34, and their corresponding dependent claims should be not be sustained.

The Answer asserts that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." Answer, p. 23; *See also In re Keller*, 642 F.2d 413, 208 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 (Fed. Cir. 1986).

While it is true that attacking references individually will not suffice where an obviousness rejection is based on a combination of the references, it is also true that a valid rejection cannot be made by citing a number of inapposite reference and hoping that, in the confusion, teachings which are not actually there will be implied. A careful analysis of each cited reference must be made to determine whether or not all of the claim limitations are

taught or suggested by the cited references. *See In re Royka*, 490 F.2d 981, 180 (CCPA 1974); M.P.E.P. § 2104.03. Accord. M.P.E.P. § 706.02(j). In pointing out that none of the cited references teaches or suggests a critical limitation in each of the independent claims, Appellant is simply analyzing each cited reference to determine “whether or not all of the claim limitations are taught or suggested by the cited references.” *Id.*

Under the analysis required by *Graham v. John Deere*, 383 U.S. 1 (1966) to support a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue in view of the ordinary skill in the art. The Supreme Court has recently reaffirmed the validity of the *Graham* test. *See KSR International Co. v. Teleflex, Inc.*, 550 U.S. ____ (2007). Such an analysis requires a careful determination of the scope and content of the prior art by examining the teachings of each respective reference. In the present case, the scope and content of the cited references, as evidenced by Manghirmalani, Buia, and Baekelmans, did not include the claimed subject matter, particularly an instruction, step, or means for “analyz[ing] the response information *and the unsolicited information*,” as recited in claims 1, 18, 30, and 34, or “applying heuristics to...information received from the polling and unsolicited transmissions,” as recited in claims 12 and 33, to measure the health of a device.

The differences between the teachings of the cited references and the claimed subject matter are significant, because the claimed subject matter allows for a “more robust health measurement for various network attached devices than is yielded by separately assessing individual pieces of the solicited and unsolicited information.” Applicant’s specification, p. 8. Thus, the claimed subject matter provides features and advantages not known or available in the cited references. Consequently, Manghirmalani, Buia, and Baekelmans will not support a rejection of independent claims 1, 12, 18, 30, 33, and 34 and their corresponding

dependent claims. For at least these additional reasons, the rejection of claims 1, 12, 18, 30, 33, 34, and their corresponding dependent claims should not be sustained.

(B) Claims 7, 17, 38, and 39 are patentable over Manghirmalani, Buia, Baekelmans, and Rayes:

Claim 7 depends from independent claim 1, claim 17 depends from independent claim 12, and claims 38 and 39 depend from independent claim 34. For the reasons presented above, Appellant respectfully submits that independent claims 1, 12, and 34 are in condition for allowance. For at least this reason, the rejection of claims 7, 17, 38 and 39 should not be sustained.

Rayes, like Manghirmalani, Buia, and Baekelmans, does not teach or suggest an instruction, step, or means for “anayl[ing] the response information *and the unsolicited information*,” as recited in claims 1, 18, 30, and 34, or “applying heuristics to...information received from the polling and unsolicited transmissions,” as recited in claims 12 and 33, to measure the health of a device. Therefore, Rayes does not remedy the deficiencies of Manghirmalani, Buia, and Baelemans.

The Answer refuses to specifically respond to Appellant on this matter, merely referring back to the grounds given for rejecting independent claims 1, 18, 30, and 34. (Answer, p. 23). As such, the Examiner has not set forth or cited to any portion of Rayes that teaches an instruction, step, or means for “anayl[ing] the response information *and the unsolicited information*,” as recited in claims 1, 18, 30, and 34, or “applying heuristics to...information received from the polling and unsolicited transmissions,” as recited in claims 12 and 33, to measure the health of a device. Consequently, a *prima facie* case of

obviousness has *not* been established. For at least these reasons, the rejection of claims 7, 17, 38, and 39 should not be sustained.

(C) Claim 20 is patentable over Manghirmalani, Buia, Baekelmans, and Shevenell:

Claim 20 depends from independent claim 18. For the reasons stated above in section A, Appellant respectfully submits that independent claim 18 is in condition for allowance. For at least this reason, the rejection of claim 20 should not be sustained.

Shevenell, like Manghirmalani, Buia, and Baekelmans, does not teach or suggest an instruction, step, or means for “anayz[ing] the response information *and the unsolicited information*,” as recited in claims 1, 18, 30, and 34, or “applying heuristics to...information received from the polling and unsolicited transmissions,” as recited in claims 12 and 33, to measure the health of a device. Therefore, Shevenell does not remedy the deficiencies of Manghirmalani, Buia, and Baekelmans.

The Answer also refuses to specifically respond to Appellant on this matter, merely referring back to the grounds given for rejecting independent claims 1, 18, 30, and 34. (Answer, p. 24). As such, the Examiner has not set forth or cited to any portion of Rayes that teaches an instruction, step, or means for “anayz[ing] the response information *and the unsolicited information*,” as recited in claims 1, 18, 30, and 34, or “applying heuristics to...information received from the polling and unsolicited transmissions,” as recited in claims 12 and 33, to measure the health of a device. Consequently, a *prima facie* case of obviousness has not been established. For at least these reasons, the rejection of claim 20 should not be sustained.

In view of the foregoing, it is submitted that the final rejection of the pending claims is improper and should not be sustained. Therefore, a reversal of the Rejection of August 22, 2008 is respectfully requested.

Respectfully submitted,

DATE: January 26, 2009

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